IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10339 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE AKIL KURESHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

NARENDRA BHIKHURAO BENDKAR

Versus

UNION OF INDIA

Appearance:

1. Special Civil Application No. 10339 of 2004

PS GOGIA for Petitioner No. 1

MR RM CHHAYA for Respondent No. 1 & 3

MR SAMIR J DAVE for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE AKIL KURESHI

Date of decision: 15/12/2004

ORAL JUDGEMENT

Rule. Learned advocate Mr.R.M.Chhaya waives service of rule on behalf of respondent Nos.1 & 3 and

learned advocate Mr.Samir Dave waives service of rule on behalf of respondent No.2. At the joint request of the learned advocates appearing for the parties, the petition is taken up for final disposal today.

2. In the present petition, the petitioner has challenged the legality of the order dated 2nd November 1995 by which the request of the petitioner to refer the dispute for adjudication before the appropriate Labour Court/Industrial Tribunal was rejected on the ground that "the workman was engaged as an outsider postman against leave vacancy as a substitute and worked for less than 240 days. This does not bestow him any right for regularisation". The petitioner has also challenged the subsequent communication dated 29.4.2003 by which is request for review of the said order dated 2.11.95 was also rejected.

3. On the basis of the averments that he had worked for more than 240 days continuously between November 1989 and August 1990 and that he had totally worked for more than five years between 1984 and 1990 and that his services were terminated without following the provisions of section 25-F and G of the Industrial Disputes Act, the petitioner approached the Conciliation Officer by his representation dated 20th August, 1993. Upon failure of the conciliation, the Conciliation Officer submitted his failure report on 4th May 1995. The respondent No.2, however, for the reasons indicated above, found that the dispute is not required to be referred for adjudication.

4. Initially the petitioner challenged the said order dated 2.11.95 before the CAT, Ahmedabad by filing Original Application No.285/96. The said petition, however, came to be rejected by the order dated 20th December 2000 by the Tribunal holding that the Tribunal has no jurisdiction to entertain the application which involves question of Industrial Disputes Act. The application was, therefore, returned to the applicant-petitioner for approaching the appropriate forum. The petitioner, thereafter, once again approached the Assistant Labour Commissioner by the letter dated 2.8.2001 and requested for reconsideration of the decision. Subsequently, the petitioner represented to the respondent No.2 on 1.4.03 for making reference of his dispute. This request of the petitioner was turned down as noted earlier by the letter dated 29.4.2003.

5. Thus unfortunately for the termination of the year 1990, the petitioner has so far not been able to reach a Court of law for adjudication of his demands.

The short question is whether the respondent No.2 was justified in rejecting the request of the petitioner for reference of his dispute for adjudication to the appropriate Labour Court/Industrial Tribunal. As noted earlier, the reason indicated for refusal of reference was that he was engaged as an outsider postman and had worked for less than 240 days and that does not bestow him any right for regularisation. In my view, the respondent No.2 erred in law in rejecting the request for making the reference on the above grounds. Firstly, the case of the petitioner was for setting aside his termination which he complained was in violation of the provisions of section 25-F and G of the Industrial Disputes Act. Even if it is assumed that he had not worked for 240 days during the relevant period, the question of applicability of section 25-G of the Industrial Disputes Act still remains for consideration. Whether the termination of the petitioner was legal or not and whether he had any right for being considered for regularisation could not have been concluded by the respondent No.2 without sufficient material and by delving deep into the issues arising and primarily it is the duty of the competent court under the Industrial Disputes Act to decide such issues upon evidence that may be led in the reference. It is by now well settled that the appropriate Government while deciding the question whether the dispute is required to be referred for adjudication or not cannot delve in the matter and decide the lis between the parties (See Telco Convoy Drivers Mazdoor Sangh v. State of Bihar, AIR 1989 SC 1565).

6. In the result, I find that the impugned orders of the respondent No.2 are required to be set aside. Accordingly, impugned orders dated 2.11.95 and 29.4.03 are set aside. Respondent No.2 is directed to reconsider the question of referring the dispute of the petitioner keeping in mind the observations made in this order. This may be done within a period of three months from the date of receipt of a copy of this order. With these directions, the petition is allowed to the above extent. Rule is made absolute accordingly with no order as to costs.

(Akil Kureshi, J.)
(vjn)